



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

W. Tayloe Murphy, Jr.
Secretary of Natural Resources

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Director

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Regional Director

March 24, 2005

STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO

**C.A. Padgett Enterprises
Registration Number: 31044**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 10.1-1300 and 10.1-1185, between the State Air Pollution Control Board and C.A. Padgett Enterprises for the purpose of resolving certain violations of environmental law and/or regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Air Pollution Control Board, a permanent collegial body of the Commonwealth of Virginia as described in Code §§ 10.1-1301 and 10.1-1184.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Order.
6. "C.A. Padgett" means C.A. Padgett Enterprises, certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.

7. "Facility" means the C.A. Padgett Enterprises facility, located in Campbell County, Virginia.
8. "Regulations" means the "State Air Pollution Control Board Regulations for the Control and Abatement of Air Pollution," which have been incorporated into Title 9 of the Virginia Administrative Code (VAC).

SECTION C: Findings of Fact and Conclusions of Law

1. The facility is a batch mix asphalt plant with an air permit dated November 9, 2000. Condition #23 of the permit states the following:

Stack Test - Initial performance tests shall be conducted for particulate matter from the batch mix asphalt plant's fabric filter to determine compliance with the emission limits contained in Condition #15. The test shall be performed within 60 days after achieving the maximum production rate at which the facility will be operated, but in no event later than 180 days after start-up of the permitted facility. Tests shall be conducted and reported and data reduced as set forth in 9 VAC 5-50-30. The permittee shall submit a test protocol at least 30 days prior to testing. Two copies of the test results shall be submitted to the Lynchburg Office within 45 days after test completion.
(9 VAC 5-50-30 and 9 VAC 5-80-10J)

2. On June 6, 2003, a site inspection was conducted for the C.A. Padgett facility. The source contact informed DEQ, at the time of this inspection, that the plant had been operating since some time in 2002. The facility had achieved "start-up" status, which required a stack test. A Warning Letter was issued on June 25, 2003, to address this deficiency.
3. On July 24, 2003, C.A. Padgett was issued a Stationary Source Permit to Construct and Operate a batch mixed asphalt plant. This permit superceded the November 9, 2000, permit. Condition 24 of this permit for stack testing states the following:

Stack Test - Initial performance tests shall be conducted for filterable particulate matter from the batch mix asphalt plant's fabric filter to determine compliance with the emission limits contained in Condition 15. The test shall be performed within 60 days after achieving the maximum production rate at which the facility will be operated, but in no event later than 180 days after start-up of the permitted facility. Tests shall be conducted and reported and data reduced as set forth in 9 VAC 5-50-30. The permittee shall submit a test protocol at least 30 days prior to testing. Two copies of the test results shall be submitted to the Lynchburg Office within 45 days after test completion.
(9 VAC 5-50-30 and 9 VAC 5-80-1180)

4. A stack test protocol was received in SCRO on August 25, 2003. This protocol indicated that the required testing would be performed at the facility on September 25, 2003.

5. On September 25, 2003, Air Monitoring Specialists were onsite to conduct the required stack testing to meet conditions 24 and 25 of the permit. During the preliminary flow checks prior to start-up of the test, Air Monitoring Specialist found that there was a flow disturbance in the stack. The test could not be conducted according to EPA Methods until a straightening vein was installed.
6. The stack test was rescheduled and conducted on November 17, 2003. Air Monitoring Specialist was onsite to conduct the required testing to meet conditions 24 and 25 of the July 24, 2003, permit.
7. On March 5, 2004, C.A. Padgett submitted the results of the November 17, 2003, stack testing event. These results were received in SCRO 64 days after the 45 day deadline. The stack testing results demonstrated noncompliance with the particulate matter (filterable) gr/dscf emissions limit outlined in Condition 15 of the July 24, 2003, permit. Condition 15 of the permit stated the following"

Emission Limits – Emissions from the operation of the rotary dryer filter exhaust stack shall not exceed the limits specified below:

Particulate Matter (filterable) – 0.04 gr/dscf
(9 VAC 5-50-260)

8. During the November 17, 2003, stack testing event, Particulate Matter (filterable) emissions from the rotary dryer filter exhaust stack were as follows:

Particulate Matter (filterable) - .0526 gr/dscf (Average of 3 runs)

9. C.A. Padgett is in violation of 9 VAC 5-50-30, 9 VAC 5-80-1180 and 9 VAC 5-50-260 of the Regulations. The stack test results were not received within 45 days after test completion as the permit outlines. In addition, the test results indicated noncompliance with the permit limits. A Notice of Violation was issued on March 30, 2004, to address the failed stack test and for submitting the test results 64 days after the deadline outlined in the permit (45 days). The source will be required to retest by June 22, 2004.
10. A stack test protocol was then received in SCRO on June 8, 2004. This protocol indicated that the required stack testing would be performed at the facility on June 10, 2004.
11. C.A. Padgett notified the Department of Environmental Quality on June 8, 2004, that there had been a breakdown and that the test would be postponed until further notice. Mr. Mike Allen then called DEQ on June 14, 2004, and stated that the test would be rescheduled for June 23, 2004.
12. A stack test was then performed on June 23, 2004, to test for filterable Particulate Matter. Air Monitoring Specialist was onsite to conduct the required testing.
13. On July 23, 2004, C.A. Padgett submitted the results of the June 23, 2004, stack-testing event. The stack testing results demonstrated noncompliance with the particulate matter

(filterable) gr/dscf emissions limits outlined in Condition 15 of the July 24, 2003, permit. Condition 15 of the permit states the following:

Emission Limits – Emissions from the operation of the rotary dryer filter exhaust stack shall not exceed the limits specified below:

Particulate Matter (filterable) – 0.04 gr/dscf
(9 VAC 5-50-260)

14. During the June 23, 2004, stack testing event, Particulate Matter (filterable) emissions from the rotary dryer filter exhaust stack were as follows:

Particulate Matter (filterable) - .0896 gr/dscf (Average of 3 runs)

15. C.A. Padgett is in violation of 9 VAC 5-50-30, 9 VAC 5-80-1180 and 9 VAC 5-50-260 of the Regulations. The test results indicated noncompliance with the permit limits. A Notice of Violation was issued on July 29, 2004, to address the failed stack test.
16. On or about September 29, 2004, C.A. Padgett informed SCRO that a new baghouse has been purchased and there are plans to install it as soon as it is delivered.
17. A meeting was held with C.A. Padgett on November 18, 2004 to discuss the NOV's that were issued and the option of proposing a Supplemental Environmental Project (SEP) to resolve the issue.
18. A site visit was made to C.A. Padgett on December 15, 2004 to confirm that the new baghouse was onsite.
19. A SEP proposal was submitted to DEQ on December 28, 2004.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority of §§10.1-1307 D., 10.1-1309, 10.1-1184, §10.1-1316 C., and 10.1-1186.2 orders and C.A. Padgett agrees that:

1. C.A. Padgett shall pay a civil charge of \$15,076.00 dollars for the violations described in Section C of this Order. C.A. Padgett may satisfy its obligations in part by performing the Supplemental Environmental Project (SEP) described in Appendix A of this order.
2. C.A. Padgett shall make a payment to the Department of \$4,523.00 of this civil charge, which represents 30% of the civil charge, within 30 days of the effective date of this Order. Payment shall be by check, certified check, money order, or cashier check payable to "Treasurer of the Commonwealth of Virginia" and sent to:

Receipts Control
Department of Environmental Quality
PO Box 10150
Richmond, Virginia 23240

C.A. Padgett shall include its Federal Identification Number with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this paragraph.

3. C.A. Padgett shall implement the SEP as identified in Appendix A of this Order. The cost to C.A. Padgett for the SEP shall be a minimum of \$10,553.00, which represents 70% of the civil charge. Upon completion of the SEP, pursuant to Virginia Code §10.1-1186.2 and as described in Appendix A, C.A. Padgett shall within 30 days provide a completion report including actual SEP costs to the Department.
4. Within 45 days of the effective date of this order, C.A. Padgett will install the proposed particulate matter (PM) monitoring equipment as outlined in the SEP proposal.
5. A stack test protocol will be submitted to the Department (DEQ – South Central Regional Office, Lynchburg) at least 30 days prior to testing. Approved EPA Testing Methods shall be used and conducted to meet conditions 24 and 25 of the sources' permit dated July 24, 2003.
6. An appropriate stack test shall be completed to successfully demonstrate compliance with the particulate matter emissions limit of 0.04 gr/dscf, as stated in condition 15 of the July 24, 2003, permit, within 75 days of the effective date of this order. The stack test report shall be submitted to the Department (DEQ – South Central Regional Office, Lynchburg) within 45 days of testing.
7. Within 120 days of the effective date of this order, C.A. Padgett shall submit a completed Form 7 Application for the installation of the PM Monitor, to the Department (DEQ - South Central Regional Office, Lynchburg). This will result in an amendment to the current permit to incorporate operational requirements for the monitor. The requirements include the calibration of the monitor and frequency, response level and frequency of events that demonstrate noncompliance, record keeping/reporting and a QA program. The requirements are subject to change upon review of the application by the DEQ compliance and permitting staff.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of C.A. Padgett, for good cause shown by C.A. Padgett, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to C.A. Padgett by DEQ on March 30, 2004, and July 29, 2004. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, C.A. Padgett admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. C.A. Padgett consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. C.A. Padgett declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by C.A. Padgett to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. C.A. Padgett shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. C.A. Padgett shall show that such circumstances were beyond its control and not due to a lack of

good faith or diligence on its part. C.A. Padgett shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

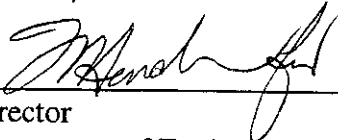
- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.


9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and C.A. Padgett. Notwithstanding the foregoing, C.A. Padgett agrees to be bound by any compliance date, which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to C.A. Padgett. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve C.A. Padgett, from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By its signature below C.A. Padgett voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of April 1, 2005.


Director
Department of Environmental Quality

C.A. Padgett Enterprises voluntarily agrees to the issuance of this Order.

By: 
Date: 3-30-05

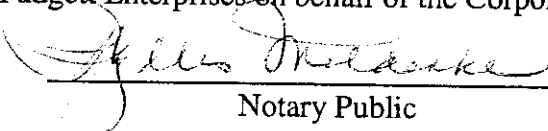
Commonwealth of Virginia

~~City~~/County of CAMPBELL

The foregoing document was signed and acknowledged before me this 3rd day of

MARCH, 2005, by CHARLIE PADGETT, who is
(name)

OWNER of C.A. Padgett Enterprises on behalf of the Corporation.
(title)


Notary Public

My commission expires: APRIL 30 2008

SUPPLEMENTAL ENVIRONMENTAL PROJECT

SECTION I: DESCRIPTION OF THE PROJECT

1. C.A. Padgett shall complete the following supplemental environmental project ("SEP"), which the parties agree is intended to secure environmental protection and improvements:

C.A. Padgett proposes to install a particulate monitoring device on the new baghouse. The Facility currently has an old baghouse that has failed the last two stack tests. The addition of this monitor will enable the company to monitor particulates on a continual basis and allow records to be kept of the output.

2. C.A. Padgett shall complete the SEP as follows:

The project will include completion of installation of the particulate monitoring device within 45 days of the effective date of this order.

The SEP is more specifically described in the SEP Analysis Addendum (herein after, the "Addendum"), attached hereto and incorporated herein by reference.

SECTION II: PROJECT COST

C.A. Padgett shall perform this SEP in partial settlement of the enforcement action initiated against C.A. Padgett for violations listed in the Notice of Violations issued on March 30, 2004 and July 29, 2004, respectively. C.A. Padgett shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report. In the event that the SEP is not performed as described in this Appendix, upon notification by the Department, C.A. Padgett shall pay the \$10,553.00, which represents 70% of the civil charge amount, to the Department within 30 days of such notification according to the procedures specified in Section D of the Order.

SECTION III: REPORTS AND DOCUMENTATION

A. SEP Completion Report

C.A. Padgett shall submit a SEP Completion Report to the Department within 30 days of the completion of the SEP. The SEP Completion Report shall contain the following information:

1. A detailed description of the SEP as implemented;
2. A description of any operating problems encountered and the solutions thereto;
3. Itemized costs, documented by copies of purchase orders and receipts or canceled checks;
4. Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Order; and,
5. A description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).

- B. C.A. Padgett shall submit all notices and reports required by this Consent Order to David M. Miles, South Central Regional Office, Department of Environmental Quality, 7705 Timberlake Road, Lynchburg, VA 24502 by first class mail.
- C. C.A. Padgett shall maintain legible copies of documentation of the underlying research and data for any and all documents or reports submitted to the Department pursuant to this Consent Order, and shall provide the documentation of any such underlying research and data to the Department within seven days of a request for such information.
- D. In all documents or reports, including, without limitation, the SEP Completion Report, submitted to DEQ pursuant to this Consent Order, C.A. Padgett, shall by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

"I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment."

SECTION IV: DISPOSITION OF REPORT

- A. Following receipt of the SEP Completion Report described in Section III (A) above, the Department will do one of the following: (1) accept the SEP Completion Report or; (2) reject the SEP Completion Report, notify C.A. Padgett in writing, of deficiencies in the SEP Completion Report and grant an additional (10) days in which to correct any deficiencies.
- B. If the Department elects to exercise option (2) above, it shall permit C.A. Padgett the opportunity to object in writing to the notification of deficiency or disapproval given pursuant to this section within (10) days of receipt of such notification. The Department and C.A. Padgett shall have a total of thirty (30) days from the receipt from the Department of the notification of objection to reach agreement on issues in contention. If agreement cannot be reached on any such issues within this thirty (30) day period, the Department shall provide a written statement of its final decision regarding such issues which decision shall be binding upon C.A. Padgett. C.A. Padgett agrees to comply with any requirements imposed by the Department as a result of any such deficiency or failure to comply with the terms of the Consent Order.

SECTION V: FAILURE TO PERFORM

- A. The determinations of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of the DEQ.
- B. Nothing in this Order shall be construed as prohibiting, altering, or in any way limiting, the ability of the Department to seek any other remedies or sanctions available by virtue of C.A. Padgett's violation of this Order or of the statutes and regulations upon which this Order is based, or for C.A. Padgett's violation of any applicable provision of law.

SECTION VI: MISCELLANEOUS PROVISIONS

- A. C.A. Padgett agrees that DEQ may inspect the Facility at any time in order to confirm that the SEP is being undertaken in conformity with the representations made herein.
- B. Any public statement, oral or written, in print, film, or other media, made by C.A. Padgett making reference to the SEP shall include the following language, "This project was undertaken in connection with the settlement of an enforcement action taken by the Department of Environmental Quality for violations of 9 VAC 5-50-260, 9 VAC 5-50-30 and 9 VAC 5-80-1180 of the State Air Pollution Control Board Regulations for the Control and Abatement of Air Pollution."
- C. This Order shall not be construed to constitute the Department's approval of the equipment or technology installed by C.A. Padgett in connection with the SEP under the terms of this Order.
- D. C.A. Padgett agrees not to deduct any of the expenses of the SEP from its income for tax purposes.

**SUPPLEMENTAL ENVIRONMENTAL PROJECT
ANALYSIS ADDENDUM
VA CODE §10.1-1186.2.A**

Case Name: C.A. Padgett Enterprises

Project Description: The project will include completion of installation of a particulate monitoring system in the new baghouse. The project will result in continuous monitoring of particulate matter and allow C.A Padgett to keep a record of the output.

The facility has recently installed a new baghouse due to failing the past two required stack tests. This monitor will enable C.A. Padgett to recognize a problem quickly and make the necessary repairs or adjustments as needed to minimize emissions.

Initial Penalty Computation, Cost of SEP and Final Penalty:

Initial penalty	=	\$15,076.00
Estimated cost of SEP	=	\$11,058.00
SEP Credit	=	\$10,553.00
Final Penalty	=	\$4,523.00

SEP Not Otherwise Required by Law: The proposed project is being undertaken as a step to better particulate emissions. Neither DEQ nor any local ordinance requires this project.

Geographic Nexus: Yes, the SEP is being undertaken at the same facility at which the violation occurred.

Qualifying Categories: This project falls under the categories of pollution reduction and monitoring.

Factors:

- (a) C.A. Padgett confirms that tax credits are not being sought for this project.
- (b) Installation of the particulate monitor system will reduce the possibility of excess emissions (visible emissions).
- (c) The use of a monitoring system routed through a fabric filter is a recognized technique for controlling particulate emissions.
- (d) This project will have a positive environmental effect on any low income or minority populations in the immediate geographic area or the geographic area impacted by the SEP.
- (e) This project will reduce the particulate emissions from being placed directly into the atmosphere without first being processed through air pollution control equipment.
- (f) This project does fit the definition of pollution reduction.